

**Local 370, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO and Clifton M. Black Co., Inc. and Local 1373, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 7-CD-401**

June 9, 1982

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN VAN DE WATER AND  
MEMBERS JENKINS AND HUNTER

This is a proceeding pursuant to Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by Clifton M. Black Co., Inc., herein called the Employer, alleging that Local 370, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, herein called the Plumbers, had violated Section 8(b)(4)(D) of the Act by engaging in conduct with an object of forcing or requiring the Employer to assign certain work to employees represented by it rather than to employees represented by Local 1373, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein called the Carpenters.

A hearing was held on June 23 and 24, 1981, before Hearing Officer Harvey R. Dasho. All parties appeared at the hearing and all were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Carpenters filed a brief in support of its position.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The rulings of the Hearing Officer made at the hearing are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

### I. THE BUSINESS OF THE EMPLOYER

The Employer, a Michigan corporation, with its principal office and place of business in Flint, Michigan, is engaged in general construction work. During the 12-month period ending May 1981, it purchased and received goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Michigan for installation at the Hyatt Regency Hotel under construction in Flint, Michigan. The parties stipulated, and we find, that

the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

The parties stipulated, and we find, that the Plumbers and the Carpenters are labor organizations within the meaning of Section 2(5) of the Act.

### III. THE DISPUTE

#### A. *Work in Dispute*

The work in dispute consists of the installation of synthetic marble bathroom vanity sink tops in the Hyatt Regency Hotel under construction in Flint, Michigan.

#### B. *Background and Facts of the Dispute*

Finance/Design/Construct, Inc. (hereinafter F.D.C.), is the manager of the hotel construction project. The Employer entered into a contract with F.D.C. by which the Employer became a miscellaneous general contractor. As such, the Employer performs any work that F.D.C. assigns to it. In mid-April 1981,<sup>1</sup> F.D.C. directed it to install vanity sink tops in the hotel bathrooms. These vanity tops are essentially countertops into which the manufacturer has molded the sink basins. The disputed installation includes sanding or sawing the vanity tops so that they fit into place, and then gluing them to wood frames which have been nailed onto the bathroom walls. (It is not disputed that attaching the faucets and drains is work which belongs to employees represented by the Plumbers.) Approximately 171 of the approximately 395 vanity tops have already been installed.

The Employer employs carpenters, laborers, and plasterers, and has entered into collective-bargaining agreements with unions representing those crafts. It does not employ any plumbers and does not have a collective-bargaining agreement with the plumbers union. On approximately April 15, the Employer assigned the vanity installation to its carpenters. On or about April 20, there was a meeting attended by Charles Jenkins, business agent for the Carpenters; Calvin Strang, business agent for the Plumbers; Wes Worthing, project superintendent for the plumbing subcontractor; the Flint plumbing inspector; Glen Wilson, a representative of the Employer; and Robert Bergey, F.D.C.'s project superintendent. The purpose of the meeting was to settle a dispute between the

<sup>1</sup> All dates herein are in 1981.

Carpenters and the Plumbers regarding the vanity top installation. Strang maintained at the meeting that the "city inspector" would not approve the work unless it was done by plumbers. Subsequent to this meeting, Worthing told Bergey that the plumbers would walk off the job if carpenters continued to install the vanity tops. On Friday, April 24, carpenters began to install the vanity tops. At the hearing, Strang testified that the plumbers walked off the job and went to the union hall where they told him that they were upset because carpenters were installing the tops. The plumbers returned to work on Monday, April 27, but on May 1 they began to picket the construction site and all work ceased. The Employer approached the mayor of Flint to secure his assistance in ending the picketing. The mayor contacted the Plumbers' business agent and, on May 12 or 13, he obtained an agreement that installation of the vanities would cease until the work dispute was resolved. The Plumbers stopped picketing immediately. Several days later, Strang had a conversation with Bergey during which Bergey inquired whether Strang had instituted a proceeding to resolve the jurisdictional dispute regarding the installation of the vanity tops. In response, Strang threatened to picket the construction site again.

#### *C. Contentions of the Parties*

The Carpenters contends that there is reasonable cause to believe that the Plumbers violated Section 8(b)(4)(D) and the proceeding is properly before the Board for determination of dispute. It argues that, on the basis of the contract between the Employer and the Carpenters, the Employer's assignment and preference, and economy and efficiency, the work in dispute should be assigned to the employees represented by the Carpenters.

The Plumbers maintains that it has not violated Section 8(b)(4)(D), and therefore the Board has no jurisdiction to proceed in this matter. Although the Plumbers did not file a brief, it appears to assert that the picketing was motivated by the expiration of collective-bargaining agreements between the Plumbers and various plumbing contractors. With respect to the merits of the work dispute, the Plumbers urges that area practice indicates that plumbers should install the vanity tops, and that plumbers can do the work more efficiently and economically than carpenters. The Plumbers also contends that the Flint plumbing code requires that plumbers install the vanity tops.

Finally, the Employer contends that carpenters should do the work because they can do it more efficiently and economically.

#### *D. Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied (1) that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and (2) that the parties have not agreed upon a method for the voluntary adjustment of the dispute. As to the first, after the Employer assigned the installation to carpenters, Worthing told Bergey that the plumbers would walk off the job if carpenters did not stop doing the work. On April 24, the plumbers did leave the jobsite when carpenters began the installation. They went to the union hall where they told Strang that they objected to the work assignment. Additionally, the picketing in May ceased when the mayor of Flint obtained an agreement that no more tops would be installed until the jurisdictional dispute was resolved. A few days after the picketing stopped, Strang threatened to resume the picketing when Bergey asked him whether he was seeking to have the jurisdictional dispute resolved. Accordingly, we conclude that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated and that the dispute is properly before us for determination.

There is no agreed-upon method for the voluntary adjustment of the dispute.

#### *E. Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.<sup>2</sup> The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience reached by balancing those factors involved in a particular case.<sup>3</sup>

The following factors are relevant in making the determination of the dispute before us:

##### *1. Board certification and collective-bargaining agreement*

There is no evidence that any of the labor organizations involved herein has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees. The Employer does not have a collective-bargaining agreement with the Plumbers. Although the Employer does have a collective-bargaining agreement with the Carpenters, it was not admitted into evidence and therefore we are unable to determine if it

<sup>2</sup> *N.L.R.B. v. Radio and Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO* [Columbia Broadcasting System], 364 U.S. 573 (1961).

<sup>3</sup> *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

covers the work in dispute. This factor, therefore, does not favor either party.

## 2. Employer assignment and preference

The Employer has assigned the work, and prefers an assignment, to employees represented by the Carpenters. This factor favors an assignment of the work to employees represented by the Carpenters.

## 3. Area practice

Area practice regarding the installation of vanity sink tops is unsettled. The parties stipulated that carpenters in the Flint area have installed vanity tops which do not have the sink basin already affixed. The Carpenters' business agent and a carpenter testified at the hearing that carpenters have installed one-piece units at jobsites in the Flint area. Other witnesses, however, testified that plumbers typically installed one-piece units, and also that plumbers install every type of vanity top. We conclude, therefore, that this factor does not favor either party.

## 4. Relative skills

The installation of the vanity tops requires woodworking skills traditionally performed by carpenters. The tops sometimes must be sanded or sawed so that they fit into place properly. The tools needed for installation include hammer, belt sander, skill saw, file, and square. After the tops are trimmed, they are glued onto wood frames which have been constructed and nailed into place by carpenters. Finally, two sides are cut and fitted. Employees represented by the Carpenters have already installed approximately 171 vanity tops and the Employer has expressed its satisfaction with the work.

Plumbers also work to some extent with wood. At the Hyatt Regency jobsite, they install wood backing that supports bathroom fixtures. We find, however, that employees represented by the Carpenters are more adept at the type of work in dispute, particularly the trimming which is sometimes necessary. The carpenters' greater woodworking skills, therefore, favor the assignment of the disputed work to employees represented by the Carpenters.

## 5. Economy and efficiency of operation

The Employer does not employ any plumbers. It usually subcontracts out any plumbing work it must perform to a plumbing subcontractor. At the hearing, the Employer stated that it would have to give up a portion of its contract with F.D.C. if the installation work were awarded to employees rep-

resented by the Plumbers. The Employer explained that it could not subcontract this particular work because of the terms of its contract with F.D.C. Under that contract, the Employer is a miscellaneous general contractor, and F.D.C. retains the right to contract directly with a plumbing firm. The Employer further stated at the hearing that if F.D.C. did not exercise this right, and instead permitted the Employer to subcontract the installation work, it would be more expensive to have plumbers rather than carpenters do the work.

The Plumbers argues that when the work is performed by carpenters it must be done in two stages. First, carpenters install the vanity tops, and then plumbers hook up the drains, faucets, and pipes. The Plumbers maintains that, if plumbers install the sink tops, the entire operation can be performed in one stage because the plumbing could be hooked up as soon as the vanity top is in place.

We are not persuaded by the Plumbers' argument. The distinction between a one-stage and two-stage operation is artificial and insignificant. We do not believe that the vanity tops would be installed more quickly or more efficiently simply because the plumbing could be hooked up immediately upon installation. Further, cost considerations, the possibility that the Employer may lose this work if it is assigned to employees represented by the Plumbers, and the greater woodworking skills of carpenters indicate that the installation can be done more economically and efficiently by carpenters. We conclude, therefore, that this factor strongly favors an award of the work in dispute to the employees represented by the Carpenters.

## 6. Local municipal code

The Plumbers contends that the Flint plumbing code defines the vanity tops as plumbing fixtures<sup>4</sup> and that pursuant to the code only plumbers can install plumbing fixtures. However, the Flint supervisor of trade inspections, who has responsibility for supervising plumbing inspections, stated in a memorandum to plumbing inspectors, dated June 4, 1976, that vanities into which the sinks have been molded are not plumbing fixtures and do not have to be installed by plumbers. In another memorandum, dated April 23, 1981, he took the position that this type of vanity is a plumbing fixture, but indicated that he would permit members of the

<sup>4</sup> The plumbing code defines plumbing fixture as follows.

A receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom; or discharges used water, waste materials, or sewage either directly or indirectly to the drainage system of the premises; or requires both a water supply connection and a discharge to the drainage system of the premises. Plumbing appliances as a special class of fixture are further defined.

Carpenters to install the tops if it resolved its dispute with the Plumbers. It is therefore questionable that the Flint plumbing code requires that the work in dispute be done by members of the Plumbers. In any event, we have consistently refused to accord any weight to building codes in jurisdictional disputes.<sup>5</sup> As we explained in *Local 5, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (Arthur Venneri Company)*, 145 NLRB 1580, 1597 (1964), "we are not called upon to construe or enforce local ordinances in proceedings under Section 10(k), and whatever the ultimate intentment of such regulations may be, they cannot preempt the Board's authority and responsibility . . . ." We thus conclude that the Flint plumbing code could not preclude us from awarding the work in dispute to employees represented by the Carpenters.

#### Conclusion

Based on the entire record, and after full consideration of all relevant factors, we shall assign the work in dispute to employees represented by the Carpenters. We reach this conclusion particularly in view of the Employer's assignment and preference, relative skills, and economy and efficiency of operation. In making this determination, we are assigning the disputed work to employees who are represented by Local 1373, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, but not to that Union or its members.

<sup>5</sup> *Local 103, International Brotherhood of Electrical Workers (Siemens Corp.)*, 227 NLRB 685 (1977); *Laborers International Union of North America, Local No. 43, AFL-CIO (John M. Gerber Plumbing & Heating Co.)*, 195 NLRB 526 (1972).

#### DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

1. Employees employed by Clifton M. Black Co., Inc., Flint, Michigan, who are currently represented by Local 1373, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are entitled to perform the work of installing synthetic marble bathroom vanity sink tops in the Hyatt Regency Hotel under construction in Flint, Michigan.

2. Local 370, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, is not entitled and has not been entitled to force or require the Employer by means proscribed in Section 8(b)(4)(D) of the Act to award the above work to its members or to employees it represents.

3. Within 10 days of the date of this Decision and Determination of Dispute, Local 370, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, shall notify the Regional Director for Region 7, in writing, whether it will or will not refrain from forcing or requiring the Employer by means proscribed by Section 8(b)(4)(D) to award the work in dispute to its members or to employees it represents rather than to employees represented by Local 1373, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.